

LEGALFOXES LAW TIMES

CASE COMMENTARY ON Bhagwandas Metals Ltd vs M/S.Raghavendra

Agencies[C.S.No.392 of 1998]

By Ms. Pahul Sond

FACTS:

In the present suit, the petitioner the manufacturer and seller of iron and steel rolled products namely CTD Bars, MS Rounds, Angels and Channels and has a rolling mill at Manali for the same purpose. He planned to increase the capacity of his plant and for this had to set up new mini steel plant with an estimated cost of 532 lakhs. This was to manufacture the raw material for re-rolling and was to start in July 1995 after all the permissions from the state government were taken. One basic essential equipment for this purpose was a 11 KVA Bulk Oil Circuit Breaker (herein referred to as BOCB).

The defendant was an authorized dealer of BOCB and this requirement was informed to him through a letter in April 1995 on receipt of offer by petitioner for the order at Chennai with total cost of 5,03,350. The offer was accepted and acknowledged with a receipt to the petitioner and an advance of 11,000 Rs. was paid and the outstanding was to be paid on delivery. Defendant also informed petitioner that the order was sublet to M/S Crompton Greave Ltd. and delivery will be by March 1995 which petitioner equivocally accepted.

Later, petitioner got another letter from defendant stating that the main part of Relay is not available in market and the leading manufacturer, M/S English Electric Co.of India will be providing same due to reliable performance. After the expiry of the term there was no supply of BOCB to petitioner even after repeated reminders. After sometime, defendant wrote letter to petitioner to pay rest of money for dispatching the consignment and that defendant promised will be repaid it by Hundi after 45 days by him.

The machines were delivered and after 4 months the production was started. The performance was guaranteed for 18 months but there were major snags in the working and no effective production took place. This incurred huge loss to petitioner which he communicated to defendant through a letter. The defendant then sent a service person from Crompton Greaves Ltd. and reported on the resolved issue. This caused major and undue delay which incurred losses to the petitioner and his progress for new plant failed and also caused a huge loss to his reputation in the market.

ISSUES:

1. Has the defendant committed breach of contract and the purchase order?
2. Whether the non-availability of Relay contended in written statement?
3. Whether the defendant delivered the machinery in the stipulated time to petitioner?
4. Whether the petitioner suffered damage as set out in the plaint?

LAWS APPLIED:

1. Section 32 of Indian Contract Act, 1872— enforcement of contracts contingent on an event happening
2. Section 55 of Indian Contract Act, 1872— effect of failure to perform at fixed time in which contract is essential
3. Section 56 of Indian Contract Act, 1872— agreement to do impossible act is void
4. Section 73 of Indian Contract Act, 1872— compensation for loss or damage caused by breach
5. Section 74 of Indian Contract Act, 1872— composition for breach where penalty is stipulated
6. Section 75 of Indian Contract Act, 1872— party rightfully rescinding contract is entitled to compensation

ANALYSIS:

The petitioner claimed loss of 51,48,000 as actual damage and additional 10 lakh for loss to reputation, mental agony, stress, strain harassment with 24% interest per annum from date of plaint. The defendant claimed that the exact nature of the defect and aggravation is not known and hence the non-availability of Relay was not his fault for he made all reasonable efforts to complete the order. The court applied Section 55 of the Indian Contract Act, 1872 that if the contract is not

fulfilled in a specific time, at or before the stipulated time, it becomes voidable and this failure is not essential if there was no intention present and hence the petitioner must get compensation if contract is breached. The effect of agreement of performance if it is voidable and the promisee accepts it other than agreed upon, then he cannot get compensation unless intention is proved by providing a notice. In the present suit, the communication was through letter and the estimated loss amounted to 12,000 as calculated by defendant. The defendant also claimed that he has already repaid petitioner at time of delivery which means petitioner agreed and accepted the consignment and also the breach of contract because he didn't make it void even when he could have. The court then applied Section 32 and looked into Section 56 of Indian Contract Act, 1872 and laid precedence upon *Ganga Saran v Ram Chandra Ram Gopal*¹ in which the petitioner won due to unreasonable delivery of 154 bales of cotton in 5 days which was not possible. In the present case however, the court applied Section 55 instead of Section 56 with Section 32 because the contract was not voidable by failure of late machine delivery and the acceptance of petitioner leads to no breach of contract on part of defendant.

CONCLUSION:

However, for damages, applying Section 73 of the Indian Contract Act, 1872, the court held that the party who suffers the loss is entitled to receive by the party who breached the contract and laid precedence upon *Oil and Natural Gas Corpn. Ltd. v Saw Pipes*² which held that the contractor can claim damages for the profit he was expected to earn but could not due to breacher's action.

In the present case, the security deposit was seen as earnest money and that the breach of contract causing actual damage is not important to be proved. The court held that the damages, must be rewarded to the sufferer, i.e., the plaintiff although under section 55 the petitioner didn't issue any notice to claim compensation as held in *C.V. George and co. v M/S Marshall Sons (Manufacturers) Ltd.*³

The court further, on the issue of application of Section 74 of the Indian Contract Act, 1872 and said that the section must be read in consonance with Section 73 and 75 of the Act and the

¹ AIR 1952 SC 9

² 2003 5 SCC 705

³ (1983) 2 MLJ 525

difference between promise and performance must be kept in mind. Hence the petitioner was entitled to get compensation under the Indian Contract Act, 1872 and won the case.

However, the petitioner could have been given more compensation than the amount he was given, according to the due to the extensive cost of the machinery and the time period of delay which incurred huge losses to the petitioner. reading Section 73 at par with Section 75 of the Indian Contract Act, 1872, the court has made it very clear that the promise and the performance to promise go hand in hand and damages must be paid also for the mental harassment that the petitioner underwent. Hence, the decision of the court does not attract any criticism as it is in accordance to the precedents and awards to the petitioner a fair amount of compensation.



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